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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA,
OAKLAND DIVISION

SEAN L. GILBERT, et. al.	) Case No. CV-13-01171-JSW
	) Complaint filed February 11, 2013
	) Trial Date:
	) Pre-Trial Date:
Plaintiffs,	) Discovery Cut-Off:
)
v.	) <u>Class Action</u>
	) <u>SUPPLEMENTAL</u>
MONEYMUTUAL, LLC et. al.,	) JOINT CASE MANAGEMENT
	) STATEMENT PER RULE 16-9
)
	) Hearing Date: March 4, 2016, 11:00am
	) Department 5
Defendants.	) Hon. Jeffrey S. White, District Judge

1 Plaintiffs Sean L. Gilbert, Keeya Malone, Kimberly Bilbrew and Charmaine B.
2 Aquino and Defendants MoneyMutual, LLC, Selling Source, LLC, Glenn McKay,
3 PartnerWeekly, LLC, Brian Rauch, John Hashman, Samuel W. Humphreys, Douglas
4 Tulley, and Alton F. Irby III (collectively MoneyMutual Defendants) and Montel Brian
5 Anthony Williams, respectfully submit this Supplemental Joint Case Management
6 Statement.
7

8 The last CMC was held on April 17, 2015. In connection with that CMC, the
9 Parties filed a Joint CMC Statement pursuant to Civil Local Rule 16-9, which contains all
10 the information required by the Standing Order for All Judges, and the parties
11 incorporate that statement herein by reference. (Doc. 189) No trial date or trial-related
12 deadlines were set at that time.
13

14 Since the last CMC, the following Motions have been heard by the court:

15 On May 27, 2015, the court granted in part, and denied in part, the MoneyMutual
16 Defendants' and Montel Williams' Motion to Dismiss Second Amended Complaint's
17 Fourth Claim for Relief. (Doc 199) The court found that Plaintiffs' allegations regarding
18 the lenders' trustworthiness constituted 'non-actionable puffery'. The court found that
19 Plaintiffs allegations regarding specific representations in the Code of Lender Conduct
20 contained facts that are sufficient to state a claim for relief under the fraudulent prong
21 of the UCL. Specifically, the requirement that "Lenders on the network are prohibited
22 from using the borrower's personal information to market other products or services or
23 give the information to third parties." (SAC ¶ 99.). Plaintiffs allege that lenders
24 routinely violated that provision by selling information to other entities. The court
25 granted the motion to dismiss the fourth claim of relief as against Mr. Williams. The
26 court denied the motion to dismiss the fourth claim of relief as against John Hashman
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1 and Brian Rauch, but without prejudice as to Messrs. Hashman and Rauch challenging
2 Plaintiffs' theory of vicarious liability on a motion for judgment on the pleadings or a
3 motion for summary judgment.

4 On June 16, 2015, Plaintiffs filed the Third Amended Complaint. (Doc. 204) The
5 MoneyMutual Defendants moved to strike portions of the Third Amend Complaint.
6 (Doc. 206) On August 24, 2015, the court granted, in part, and denied, in part, the
7 motion to strike references to fictitious defendants; references to former defendants;
8 allegations regarding lender trustworthiness; allegations of fraudulent behavior; and
9 certain paragraphs of Plaintiffs' prayer for relief. (Doc. 213) The court ordered that
10 Plaintiffs file a Revised Third Amended Complaint by September 1 and a Fourth
11 Amended Complaint by September 25.
12

13 On December 4, 2015, Plaintiffs filed Motion to Leave to File a Fifth Amended
14 Complaint. (Doc. 226) On January 27, 2016, the court granted, in part, and denied, in
15 part, Plaintiffs' Motion. (Doc. 254) The court granted, in part, Plaintiffs' request to
16 amend the Selling Source and MoneyMutual Classes. The court denied Plaintiffs request
17 to amend to create a new "Main Class".
18

19 On January 27, 2016, the court granted the MoneyMutual Defendants'
20 Administrative Motion to Seal and Discharged Order to Show Cause without Imposing
21 Sanctions. (Doc. 253)
22

23 On February 8, 2016, the court granted in part, and denied in part, Plaintiffs'
24 Motion for Class Certification, without prejudice to the MoneyMutual Defendants' filing
25 a motion for decertification, if circumstances warrant such a motion. (Doc. 257). The
26 court found that Plaintiffs met their burden as to the Selling Source Class on all claims,
27 and as to the MoneyMutual Class on the CDDTL Claim, the RICO Claim, and the UCL
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1 Claim, based on the “unlawful” prong. The court found that Plaintiffs did not meet their
2 burden to show predominance on the MoneyMutual Class as to the UCL Fraud Claim,
3 and therefore excluded that claim from class certification.

4 The Parties are currently negotiating regarding the method of providing class
5 notice and the form of the class notice. The Parties hope to submit a Class Notice plan
6 by the date of this CMC. Assuming the notice plan is approved by the Court, Plaintiffs
7 should be able to provide notice to the class by the end of March 2016.

8 In addition, Plaintiffs are waiting for Cash Yes, owned by defendants David
9 Johnson and others, to produce a list of California borrowers. Finally, Plaintiffs will be
10 taking the deposition of former defendant Rare Moon Media (which Plaintiffs contend
11 owns several large lenders) on March 9, 2016 and has requested production of a list of
12 California borrowers to be produced at that time or shortly thereafter.

13 This Court formerly ordered claims against David Johnson, Kirk Chewning and
14 Vector Capital (Cash Yes defendants) to be arbitrated. A motion to strike the arbitration
15 agreement on the grounds of unconscionability has been fully briefed and is pending
16 decision by the arbitrator. Plaintiffs’ position is that if the arbitrator grants that motion,
17 the claims against Johnson and others would be returned to this court and a motion for
18 class certification would be filed. Given that, the Parties believe it makes sense to defer
19 sending the class notice pertaining to the Money Mutual Defendants and Mr. Williams
20 in order to avoid possibly having to send multiple notices.

21 This Court previously ordered Plaintiffs’ claims against Rare Moon Media (and
22 related former defendants to be arbitrated). They were arbitrated and those cases were
23 settled. This Court subsequently entered a judgment of dismissal as to the named
24 plaintiffs. However, other putative class members filed arbitration claims against Rare
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1 Moon Media as well. Dozens of such arbitrations are currently pending before the
 2 American Arbitration Association. Rare Moon has requested the AAA dismiss the
 3 arbitrations on the grounds the claimants must file their claims in small claims court. It
 4 is anticipated an arbitrator will rule on that request in the next few months. If those
 5 claimants are not able to arbitrate their claims because Rare Moon Media has waived its
 6 rights to compel arbitration, Plaintiffs' counsel intends to file a motion allowing those
 7 claimants not allowed to arbitrate their claims to intervene in this lawsuit and reinstate
 8 the class claims against Rare Moon Media and related defendants.

10 Because of the foregoing uncertainties, the Parties do not recommend the Court
 11 set a trial date at this time (and have estimated that a trial may take 20-25 days).
 12 Should the court desire to set a trial date, Defendants' lead counsel, Donald Putterman,
 13 is unavailable September 3-October 10. The parties propose the Court set another CMC
 14 for a date in mid to late August or mid-July. Provided that the Cash Yes and Rare Moon
 15 Defendants are not brought back into this case, the Parties expect discovery to be
 16 completed as follows:

18 Non-Expert Discovery Cutoff:	August 31, 2016
19 Designation of Experts:	One month later
20 Rebuttal Witness Disclosure:	One month after designation
21 Expert Discovery Cutoff:	TBD from trial
22 Hearing of Dispositive Motions:	TBD

1 DATED: February 17, 2016

2 Respectfully submitted

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4 By

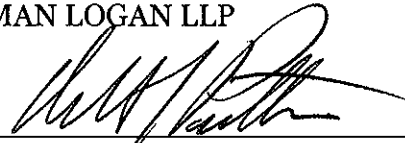


5 JEFFREY WILENS
6 Attorney for Plaintiff
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8 Dated: February 17, 2016
9

10 PUTTERMAN LOGAN LLP

11 By



12 DONALD J. PUTTERMAN
13 Attorneys for Defendants
14 MONEYMUTUAL, LLC, SELLINGSOURCE,
15 LLC, PARTNERWEEKLY, LLC,
16 MONTEL BRIAN ANTHONY WILLIAMS,
17 GLENN MCKAY, JOHN HASHMAN, BRIAN
18 RAUCH, SAMUEL W. HUMPHREYS,
19 DOUGLAS TULLEY, AND
20 ALTON F. IRBY III
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